tion, is subject to that jurisdiction.[12] As has been suggested,[13] it is evident that cases will arise where the application of the one or the other of these rules will depend upon the determination of a difficult question of fact. But another problem, even more perplexing, will surely arise, at least in cases of contract. The admiralty jurisdiction in tort cases may depend solely upon locality;[14] but in cases of contract, jurisdiction is determined by the nature of the transaction.[15] If a hydroaeroplane is to be sometimes "a vessel" and sometimes "not a vessel," what test shall determine whether a given contract relates to one or the other of its characters? And where the contract is concerned with both sorts of locomotion, which court shall have jurisdiction? These questions cannot be answered by the application of existing admiralty law.

The logical soundness of the conclusion of the American Bar Association's committee is beyond dispute; if the law of aeronautics is to develope uniformly, satisfactorily, and with certainty, jurisdiction must be conferred upon the Federal government by amendment to the Constitution. If, because constitutional amendment is not feasible, national control must be accomplished by bringing aeronautics within the scope of existing powers, the courts must cope with many difficult problems.[16] The decisions will be watched with keenest interest.

R. V.

ADMIRALTY: JURISDICTION: WORKMEN'S COMPENSATION ACTS—In the case of *Grant Smith-Porter Ship Company v. Rhode*[1] the Supreme Court of the United States has just held that a carpenter engaged in the construction of a vessel which had been launched so as to be within the jurisdiction of admiralty for some purposes, and who had contracted with his employer with reference to the state workmen's compensation law, is entitled to compensation under that law for injuries suffered on the vessel, and that such remedy is exclusive, recovery under such act being, by its terms,

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[12] Reinhardt v. Newport Flying Service Corporation, supra, n. 8.

[13] 7 Cornell Law Quarterly, 179; 31 Yale Law Journal, 437.

[14] The Plymouth (1865) 70 U. S. (3 Wall.) 20, 18 L. Ed. 125; North Pac. S. S. Co. v. Hall Bros. Marine Ry. and Shipbuilding Co. (1919) 249 U. S. 119, 125, 39 Sup. Ct. Rep. 221, 63 L. Ed. 510. There is, however, a tendency now to hold that, in cases of tort, locality is not alone determinative of jurisdiction, and that the admiralty will not take jurisdiction unless the tort in question was also maritime in nature. See note in 5 California Law Review, 492.

[15] Insurance Co. v. Dunham (1870) 78 U. S. (11 Wall.) 1, 26, 20 L. Ed. 90; North Pac. S. S. Co. v. Hall Bros. Marine Ry. and Shipbuilding Co., supra, n. 14.

[16] For a comprehensive discussion of the problems arising in the law of aeronautics see Problems in Aviation Law, by Professor George G. Bogert, in 6 Cornell Law Quarterly, 271.

[1] (Jan. 3, 1922) 66 L. Ed. 172, 42 Sup. Ct. Rep. 157.

"in lieu of all claims against his employer on account of such injury or death."[2]

In what relation does this decision stand to the recent series of cases which has determined that admiralty and maritime law overrides and controls all state law, whether originating in statute or decision, in conflict with it and impairing its uniformity?[3] Does it conflict, is it in accord, or may it be regarded as showing a partial withdrawal on the part of the court from its previous stand? That it is not to be taken as conflicting with the former cases is expressly stated by the court.

In order to stand squarely with these previous cases, the decision must have accepted and applied their major premise, first expressly announced in Southern Pacific Company v. Jensen,[4] that in admiralty matters, Federal laws, in order to operate effectively, must necessarily abrogate state laws in conflict with them.[5] Or, to put the matter conversely and more narrowly, the decision must not violate the principle that state workmen's compensation acts in contravention with Federal maritime law cannot be enforced in a state court.[6] Accepting these principles, the decision must also find as its minor premise that the facts presented do not bring the case within them. The decision is summed up in the following three phrases: "Here the parties contracted with reference to the state statute; their rights and liabilities had no direct relation to navigation, and the application of the local law cannot materially affect any rules of the sea whose uniformity is essential." In view of the application of the principle laid down by the cases with which this decision is to be reconciled,[7] the truth of the first and last statements must necessarily depend upon the

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[2] Workmen's Compensation Law No. 12 (Laws of Oregon, 1913, chap. 112, as amended by Laws of 1915, chap. 271, and by Laws of 1917, chap. 288).

[3] Southern Pacific Co. v. Jensen (1917) 244 U. S. 205, 61 L. Ed. 1086, 37 Sup. Ct. Rep. 524, L. R. A. 1918C 451; Chelentis v. Luckenbach S. S. Co. (1918) 247 U. S. 372, 62 L. Ed. 1171, 38 Sup. Ct. Rep. 501; Union Fish Co. v. Ericson (1917) 248 U. S. 308, 63 L. Ed. 261, 39 Sup. Ct. Rep. 112; Knickerbocker Ice Co. v. Stewart (1920) 253 U. S. 149, 64 L. Ed. 834, 40 Sup. Ct. Rep. 438, 11 A. L. R. 1145; Western Fuel Co. v. Garcia (1921) 42 Sup. Ct. Rep. 89; 8 California Law Review, 338, note, in which Professor A. T. Wright commented upon the effect of the Knickerbocker case and the case of Sudden and Christenson v. Industrial Accident Commission (1920) 182 Cal. 437, 188 Pac. 803, as rendering ineffective the Johnson Amendment.

[4] (1917) 244 U. S. 205, 61 L. Ed. 1086, 37 Sup. Ct. Rep. 524, L. R. A. 1918C 451.

[5] 6 California Law Review, 69, where it is pointed out by Professor Wright that this principle was the "major premise" in the Jensen Case, supra, n. 4.

[6] 27 Yale Law Journal, 255, "Admiralty Jurisdiction and State Compensation Acts"; 31 Harvard Law Review, 488. In 21 Columbia Law Review, 647, E. Merrick Dodd, Jr., in his article "The New Doctrine of the Supremacy of Admiralty over the Common Law" discusses the Jensen, Chelentis and Knickerbocker cases and shows that the doctrine announced in the Jensen case has been rigidly adhered to in the subsequent cases. See also Frederic Cunningham, "Every County Court in the United States a Court of Admiralty," 53 American Law Review, 749.

[7] Supra, n. 3.

truth of the second. That is, unless it be true that "the rights and liabilities of the parties had no direct relation to navigation," they will not, under the principle of the Jensen and following cases, be considered to have contracted solely with reference to the state statute, nor can it be held in that event and under those cases that the application of local law will not materially affect the uniformity of the maritime law. The proposition of the court, in other words, is that acts performed pursuant to contracts between employers and employees, which acts have no direct relation to navigation, do not materially affect any rules of the sea where uniformity is essential, even though the act is performed upon navigable waters. The basis for the finding of fact (the minor premise) can, however, be found only by inference from the statement in the first paragraph of the decision immediately preceding the statement of the holding itself, namely, that the contract for constructing the ship was non-maritime, which cannot now be questioned.[8] It must be assumed that the court is of opinion that employment under such a contract is also non-maritime, although the court does not explicitly say so. This case therefore emphasizes the theory of uniformity, rather than conflict of principles between state and Federal law, as the true basis of the earlier decisions—as the essential part of their major premise—and if so regarded, certainly falls into line with them.

As far as the decision goes it will be regarded as a step in the right direction by those who believe that workmen's compensation acts should apply to all classes of maritime workers. Will it be carried further and be applied to an employee injured while repairing a ship? In that case the main contract would be within admiralty jurisdiction,[9] and seemingly the employee would by Federal maritime law be denied recovery under state compensation law. The position of a company doing both marine construction and repair work, and of its employee who may do both kinds of work—that is under both kinds of contract perhaps during the same day—will not be greatly altered, and the present difficulties of adjusting insurance premiums and in some states of consequent wage reductions will be just as great, the basis of division seemingly being between maritime and non-maritime work instead of between work on the water and work on land. To summarize the law as it now stands: an employee at work in carrying out his employer's non-maritime contract, even though injured upon navigable waters, may claim compensation; a stevedore or seaman injured upon such waters may not claim compensation. The question is still open as to the case of an employee at work upon navigable waters in performing his employer's maritime contract of

[8] People's Ferry Co. v. Beers (1858) 61 U. S. (20 How.) 393, 15 L. Ed. 961; The Winnebago (1907) 205 U. S. 354, 51 L. Ed. 836, 27 Sup. Ct. Rep. 509; Thames Towboat Co. v. The Schooner Francis McDonald (1920) 254 U. S. 242, 65 L. Ed. 83, 41 Sup. Ct. Rep. 65.

[9] North Pacific S. S. Co. v. Hale Bros. Mar. R. & S. Co. (1919) 249 U. S. 119, 63 L. Ed. 510, 39 Sup. Ct. Rep. 221.

repair, but the reasoning of the principal case indicates that he may not so claim. Furthermore, the theory of the principal case emphasizing as the determining factor the nature of the contract rather than the place of work casts some doubt upon the right of an employee working under a maritime contract to claim compensation when injured on shore.[10]

W. N. K.

CONSTITUTIONAL LAW: DUE PROCESS: EQUAL PROTECTION: VALIDITY OF STATUTE FORBIDDING USE OF INJUNCTION AGAINST PICKETING—First the Hitchman case,[1] then the Duplex case,[2] and finally the Tri-City decision[3] gave the United States Supreme Court ample opportunity to formulate its position with respect to certain of the mooted problems of labor law.[4] With the possible exception of the Tri-City case, all of these were decided adversely to labor. The Tri-City case itself was a compromise decision, pleasing neither side; for in it the Supreme Court, while holding that picketing carried on by means of "dogging and importunity" was tortious, even though unaccompanied by direct violence or express threats thereof, at the same time held that the mere attempt to persuade and inform under circumstances conclusively negativing any implication of violence—which, in application to the facts of that case it interpreted to mean a single picket at each point of ingress and egress—was legal.

These cases, important as they are, shrink into insignificance in comparison with the recently decided *Truax v. Corrigan*,[5] on all hands recognized as marking an epoch in constitutional law. The facts in this case are as follows: An Arizona statute,[6] adopted

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[10] It is interesting to note that in the principal case the "saving clause" is left wholly out of account. See 6 California Law Review, 69, 71.

[1] Hitchman Coal & Coke Co. v. Mitchell (1917) 245 U. S. 229, 62 L. Ed. 260, 39 Sup. Ct. Rep. 65, L. R. A. 1918C 497, Ann. Cas. 1918B 461, dealing with the extension of the doctrine of Lumley v. Gye. This case has recently been limited by a decision of the Circuit Court, Gasaway v. Borderland Coal Corp. (Chicago Legal News for December 22, 1921). See note, 35 Harvard Law Review, 459.

[2] Duplex Printing Company v. Deering (1920) 254 U. S. 443, 65 L. Ed. 176, 41 Sup. Ct. Rep. 172, interpreting the Clayton Act so as to deny labor the right to the secondary boycott.

[3] American Steel Foundries v. Tri-City Central Trades Council et al (1921) U. S. Adv. Ops. 1921-22, p. 103, 42 Sup. Ct. Rep. 72.

[4] For an account of recent labor litigation, see note, 10 California Law Review, 82, and references there cited.

[5] (Dec. 19, 1921) U. S. Adv. Ops. 1922, p. 132, 42 Sup. Ct. Rep. 124.

[6] Arizona Civil Code, 1913, Paragraph 1464: "No restraining order or injunction shall be granted by any court of this state, or a judge or the judges thereof in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at